

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

CARL TICHACEK

**Plaintiff,
vs.**

**JONES MOTOR GROUP, INC.,
HOT SHOT EXPRESS INC.
Defendants.**

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Civil Action No. _____

NOTICE OF REMOVAL

Defendants, Jones Motor Group, Inc. (“JMG”), and Hot Shot Express, Inc. (“Hot Shot”) (collectively “Defendants”), hereby remove this action from the 239th Judicial District Court of Brazoria County, Texas to the United States District Court for the Southern District of Texas, Galveston Division pursuant to 28 U.S.C. § 1332. In support of removal, Defendants state as follows:

I. BACKGROUND

1. On November 13, 2013, Plaintiff Carl Tichacek (“Plaintiff”) filed a petition against JMG and Hot Shot in the 239th District Court of Brazoria County, Texas, Cause No. 74761-CV.

2. Plaintiff alleges that on or about June 7, 2012 he was employed by Defendants as a driver of a tractor trailer. He alleges to have suffered severe injuries while stepping off his trailer on June 7, 2012. Further he alleges that the injuries suffered were caused by the negligence of the Defendants.

II. PROCEDURAL COMPLIANCE

3. In accordance with 28 U.S.C. § 1446(a) and Local Rule 81 (as applicable), attached as appendices hereto are:

- Exhibit A:** an index of all matters being filed;
- Exhibit B:** a copy defendants Jones Motor Group, Inc. and Hot Shot Express, Inc.'s Notice of Removal to State Court;
- Exhibit C:** copies of Citations and all pleadings filed in state court;
- Exhibit D:** a list of all counsel of record, including addresses, telephone numbers, and parties represented.

4. Pursuant to 28 U.S.C. § 1441(a), a civil action brought in a state court may be removed to the United States District Court embracing the place where such action is pending. Because the state court action was filed in the 239th District Court of Brazoria County, Texas, this Court has removal jurisdiction.

5. On December 23, 2013, the Texas Secretary of State was served with copies of the Citation and Petition to Hot Shot. The Texas Secretary of State sent the Citation and Petition to Hot Shot by letter dated December 31, 2013. Hot Shot received the documents January 6, 2014. Defendants are filing this Notice of Removal within 30 days of receipt of the initial pleadings and within one year of the commencement of this action as required by 28 U.S.C. § 1446(b). Accordingly, removal of this action is timely.

6. On December 23, 2013, the Texas Secretary of State was served with copies of the Citation and Petition to JMG. The Texas Secretary of State sent the Citation and Petition to JMG by letter dated December 31, 2013. Hot Shot received the documents January 9, 2014. Defendants are filing this Notice of Removal within 30 days of receipt of the initial pleadings and within one year of the commencement of this action as required by 28 U.S.C. § 1446(b). Accordingly, removal of this action is timely.

6. Defendants' counsel contacted the Clerk of the 239th Judicial District Court of Brazoria County, Texas to request the state court's docket sheet, pleadings and executed processes filed in the case. The only documents on filed with the court are Plaintiff's Original Petition and Citations issued (no returns). The Court does not have a docket sheet set up yet, or any pleadings/orders other than Plaintiff's Original Petition.

7. Defendants are serving written notice of this Notice of Removal on all parties through their counsel of record. Defendants will also promptly file a copy of this Notice of Removal with the Clerk of the 239th Judicial District Court of Brazoria County, Texas.

III. BASIS FOR REMOVAL

8. This Court has original jurisdiction over this action because complete diversity exists on the face of Plaintiff's state court Petition and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1332(a)(1), 1441(b); *Larroquette v. Cardinal Health 200, Inc.*, 466 F.3d 373, 376 (5th Cir. 2006).

a. Diversity of Citizenship Exists

9. Pursuant to Plaintiffs' averments, Plaintiff Carl Tichacek is a citizen and resident of the state of Texas. Petition at 1, Section II. Plaintiff accurately avers that Jones Motor Group, Inc. is a nonresident foreign corporation. Petition at 1, Section II. Specifically, it is a Pennsylvania corporation. Likewise, Plaintiff accurately avers that Hot Shot Express, Inc. is a nonresident foreign corporation. Petition at 1, Section II. It is also a Pennsylvania corporation.

10. At all material times, Plaintiff and Defendants have been and are citizens of different states. No Defendant is a citizen of the State of Texas.

11. JMG is not, and was not at any relevant time, incorporated in the state of Texas, and did not at any relevant time maintain its principal place of business in the state of Texas. JMG is a Pennsylvania corporation with its principal place of business in Pennsylvania, and is therefore a citizen of Pennsylvania.

12. Hot Shot is not, and was not at any relevant time, incorporated in the state of Texas, and did not at any relevant time maintain its principal place of business in the state of Texas. Hot Shot is a Pennsylvania corporation with its principal place of business in Pennsylvania, and is therefore a citizen of Pennsylvania.

13. The Petition alleges that Tichacek is a resident of Brazoria County, Texas. Petition at 1, Section II.

b. The Amount in Controversy is Met

14. In this case, Plaintiff seeks to recover a sum of money “aggregating more than \$200,000 but less than \$5,000,000.00.” Petition at 4, Section VII.

15. Defendants deny liability and have defenses to Plaintiff’s claims. However, in light of the alleged scope, alleged severity and alleged duration of Plaintiff’s injuries, the amount in controversy exceeds the sum of \$75,000 on the face of the Petition (exclusive of interest and costs), thus satisfying the requirement of 28 U.S.C. § 1332.

16. Plaintiff has not made a jury demand.

IV. CONCLUSION

17. Because complete diversity exists and the amount in controversy exceeds \$75,000, this Court has jurisdiction under 28 U.S.C. § 1332. Defendants requests that the 239th

Judicial District Court of Brazoria County, Texas, proceed no further with Cause No. 74761-CV, and that the action styled *Carl Tichacek v. Jones Motor Group, Inc. and Hot Shot Express, Inc.* be removed from that court to the United States District Court for the Southern District of Texas, Galveston Division.

WHEREFORE, Jones Motor Group, Inc. and Hot Shot Express, Inc. pray that the above action pending in the District Court of Brazoria County, Texas, 239th Judicial District, now be removed to the Southern District of Texas, Galveston Division and prays for this and any other such relief as he may be entitled.

Respectfully submitted,

By: /s/ Holly C. Hamm
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CERTIFICATE OF SERVICE

I certify that on the 10th day of January 2014, a true and correct copy of the above and foregoing document was furnished to the following parties pursuant to Federal Rules of Civil Procedure via facsimile and certified mail return receipt requested:

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Facsimile: 713-223-7331

/s/ Holly C. Hamm
Holly C. Hamm